

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 68-021-16-1-5-00134-17
Petitioner: Larry D. Rittenhouse
Respondent: Randolph County Assessor
Parcel: 68-09-20-177-007.000-021
Assessment Year: 2016

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated his 2016 appeal with the Randolph County Assessor on July 29, 2016.
2. On December 15, 2016, the Randolph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board on January 25, 2017.¹
4. The Board issued a notice of hearing on April 27, 2017.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on June 2, 2017. She did not inspect the property.
6. Larry Rittenhouse appeared *pro se*. County Government Representative Charles Ward appeared for the Respondent. Linda Rittenhouse was a witness for the Petitioner. County Assessor Beverly Fields and Deputy Assessor George Caster were witnesses for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a single-family residence located at 125 Railroad Avenue in Winchester.
8. The PTABOA determined a total assessment of \$32,700 (land \$6,000 and improvements \$26,700).

¹ The Petitioner did not elect the Board's small claims procedures, nor did he elect to opt-out of small claims. The total assessment of the subject property is below \$1,000,000 and the Board placed this appeal on the small claims docket without objection from either party. See 52 IAC 3-1-2.

9. On his Form 131, the Petitioner requested a total assessment of \$24,500 (land \$6,000 and improvements \$18,500).

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1:	Form 131,
Petitioner Exhibit 2:	Two exterior photographs of the subject property,
Petitioner Exhibit 3:	Exterior photograph of a home located on West Washington Street along with a photograph of the “for-sale sign” in front of the home.
Respondent Exhibit 1: ²	Form 131 petition,
Respondent Exhibit 2:	Subject property record card,
Respondent Exhibit 3:	2016 Notification of Final Assessment Determination (Form 115) attached to the subject property record card,
Respondent Exhibit 4:	Aerial map of the subject property,
Respondent Exhibit 5:	2002 Exterior photograph of the subject property,
Respondent Exhibit 6:	2017 Exterior photograph of the subject property,
Respondent Exhibit 7:	List of 2015 residential sales in neighborhood 11712,
Respondent Exhibit 8:	“Sales-comparison analysis” including sales disclosures and exterior photographs of the three comparable sales,
Respondent Exhibit 9:	Pages 12 and 13 from Appendix B, and pages 6 and 8 from Appendix C of the REAL PROPERTY ASSESSMENT GUIDELINE, Book 1,
Respondent Exhibit 10:	Pages 2-20 from the 2011 REAL PROPERTY ASSESSMENT MANUAL.
Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of hearing dated April 27, 2017,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of County Assessor Representation by Charles Ward.

² Mr. Ward offered the Respondent’s exhibits at the beginning of the hearing and they were admitted to the record without objection. After the Petitioner’s case-in-chief, Mr. Ward argued he did not need to submit his evidence because he believed the Petitioner did not offer probative evidence to make a prima facie case. However, because the Respondent’s exhibits had been previously admitted to the record and both parties discussed in detail several of the exhibits, the exhibits are to remain part of the record. Further, in Mr. Ward’s “closing statement,” he acknowledged that the exhibits were part of the record and referred to them extensively. The Board notes, the inclusion of the exhibits has no effect on this final determination.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) The subject property's assessment is too high. This property is "one of only two properties" in Winchester that "fronts" railroad tracks. Property values for homes that are "situated" on railroad tracks are "not as high as values in the rest of the town." *Larry Rittenhouse argument; Pet'r Ex. 2.*
- b) In an effort to prove the subject property is over assessed, the Petitioner presented evidence of a home located on West Washington Street that was listed "last January to March for \$24,500." This property is similar in size and appearance, but it does not front railroad tracks. Because this property "does not front railroad tracks" it should have a "higher value." Granted this property did not sell, but a listing price should have some relevance because it represents the highest price a property would sell for on the market. *Larry Rittenhouse argument; Pet'r Ex. 3.*
- c) The Respondent's evidence is flawed. One of the photographs provided by the Respondent "was taken years before the date listed on the photograph." Based on that error, the validity of all of the Respondent's exhibits must be questioned. Additionally, in analyzing purportedly comparable sales, the Respondent "pretty much picked out the highest one on the list" to compare to the subject property. Furthermore, the Respondent failed to consider any properties that "front railroad tracks." Only four of the twenty-nine purportedly comparable sales were considered valid sales and that in turn "kind of shows you something about the property values in Winchester." *Larry Rittenhouse argument (referencing Resp't Ex. 5, 6, 7, 8; Pet'r Ex. 5, 7, 8.*

12. Summary of the Respondent's case:

- a) The subject property's assessment is "fair and accurately reflects its true tax value." The property is currently receiving a 28% negative influence factor for external obsolescence due to its location "a good 50 feet away" from the railroad tracks. This is the only property on the street receiving an influence factor. The Petitioner had the burden of proof and he failed to prove the current assessment is incorrect. *Ward argument; Caster testimony; Resp't Ex. 2.*
- b) The Petitioner's evidence is flawed because the one sale listing offered is just a "random listing" on West Washington Street. The Petitioner was unaware of the exact address and failed to provide any relevant information regarding the property. *Ward argument (referencing Pet'r Ex. 3).*

- c) In an effort to support the current assessment, the Respondent presented a sales-comparison analysis. This analysis was the “best attempt” to come up with the “fairest value.” In preparing the analysis, the Respondent relied on the median sales price of three comparable properties that sold in 2015. The median price per square foot equated to \$52. The subject property is currently assessed at \$51.94 per square foot. The Respondent also analyzed several additional sales in the same neighborhood, but ultimately did not consider the majority of them because they were not “arm’s-length transactions.” *Ward argument; Resp’t Ex. 8.*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
14. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2015 to 2016. In fact, the assessment only increased from \$31,800 in 2015 to \$32,700 in 2016, an increase of 2.83%. Further, the Petitioner failed to offer any argument that the burden should shift to the Respondent. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

Analysis

17. The Petitioner failed to make a prima facie case for reducing the assessment.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2016 assessment, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.
 - c) The Petitioner primarily based his argument that the subject property's assessment is excessive because the property "fronts a railroad." The Petitioner contends that homes "situated" on railroad tracks are "not as high as values in the rest of the town."
 - d) While the Petitioner's argument may have merit, it is insufficient to establish that the current assessment is incorrect. The Petitioner was required to offer market-based evidence to quantify the effect of being located by the railroad tracks, or better yet, evidence of the subject property's market value-in-use.
 - e) The Petitioner did attempt to offer some market based evidence by offering exterior photographs of a home that was listed on the open market. According to the Petitioner, this purportedly comparable property was "listed" for less than the subject property's current assessment. A taxpayer may estimate the value of a property by comparing it to similar, or comparable, properties that have sold in the market; that is precisely the theory behind the sales-comparison approach to value. MANUAL at 9-10. But to use that approach, the taxpayer must both prove the properties are comparable and explain how any differences between the properties affect their values, using generally accepted appraisal principles. *Id.*; *Long*, 821 N.E.2d at 470-71.
 - f) Here, the Petitioner testified that the purportedly comparable property is "similar in size and appearance," located at an undisclosed address "on West Washington Street" and it "did not front the railroad tracks." Even if the Board were to find that a "listing" is probative evidence of a property's value, the Petitioner's evidence is insufficient to conclude the purportedly comparable property is actually comparable

to the subject property. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Additionally, the Petitioner failed to account for any differences between the properties. Finally, the Petitioner failed to support the notion that the Board can draw any conclusions regarding the value of a subject property by comparing it to only one other property. For these reasons, the Petitioner’s evidence lacks probative value.

- g) Consequently, the Petitioner failed to make a prima facie case that the 2016 assessment is incorrect. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).³

Conclusion

18. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2016 assessment will not be changed.

ISSUED: August 30, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

³ The Board notes, the flaws in the Respondent’s evidence alleged by the Petitioner do nothing to prove the current assessment is incorrect.

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.